

**MONTANA FOURTEENTH JUDICIAL DISTRICT COURT
MUSSELSHELL COUNTY**

TESSA ZOLNIKOV,

Plaintiff,

vs.

National Board of Medical Examiners

Defendant.

Cause No.: DV-20-100

SUMMONS

**THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT,
NATIONAL BOARD OF MEDICAL EXAMINERS:**

You are hereby Summoned to answer the Complaint in this action which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the Plaintiff's attorney within twenty-one (21) days after the date of service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Witness by my hand and seal of said Court, this 3 day of ~~December~~, 2020.

CLERK OF COURT

Barb Halverson

BY:

Tabitha Worley
Deputy Clerk

DV-20-100

No. DV-20-100

FILED this 7th day of April, 2022
Barb Halverson

By Laneva Brainard
Deputy Clerk

**MONTANA FOURTEENTH JUDICIAL DISTRICT COURT
MUSSELSHELL COUNTY**

TESSA ZOLNIKOV,

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Witness by my hand and seal of said Court, this 3 day of December, 2020.

CLERK OF COURT

Barb Halverson

BY: Tabitha Worley
Deputy Clerk

AFFIDAVIT OF PROCESS SERVER

Montana Fourteenth Judicial District Court Musselshell County **MAR 31 2022**

Tessa Zolnikov

Plaintiff(s).

VS.

National Board of Medical Examiners

Defendant(s).

Attorney: Robert Farris-Olsen

Morrison, Sherwood, Wilson & Deola, PLLP
401 North Last Chance Gulch, PO Box 557
Helena MT 59624



276485

Case Number: DV-20-100

Legal documents received by Same Day Process Service, Inc. on 03/22/2022 at 5:30 PM to be served upon **National Board of Medical Examiners**, by serving CT Corporation System at 1015 15th St., NW, #1000, Washington, DC 20005

I, **Natalie Stolyarov**, swear and affirm that on **March 24, 2022** at **1:49 PM**, I did the following:

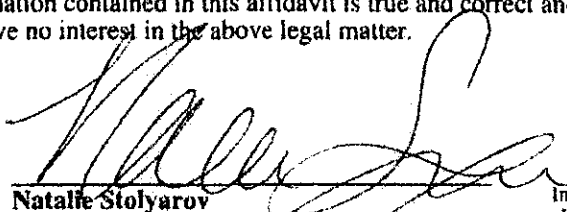
Served **National Board of Medical Examiners**, by serving **CT Corporation System** by delivering a conformed copy of the **Summons; Complaint** to **Anthony Semette** as **Intake Specialist & Authorized Agent of National Board of Medical Examiners**, by serving **CT Corporation System** at **1015 15th St., NW, #1000, Washington, DC 20005**.

Description of Person Accepting Service:

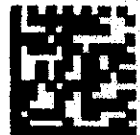
Sex: Male Age: 55 Height: 5ft4in-5ft8in Weight: 161-200 lbs Skin Color: African-American Hair Color: Black

Supplemental Data Appropriate to this Service:


I declare under penalty of perjury that the foregoing information contained in this affidavit is true and correct and that I am a professional process server over the age of 18 and have no interest in the above legal matter.

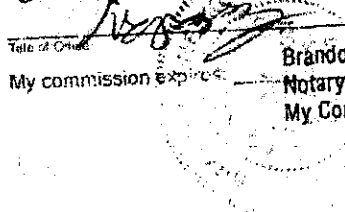

Natalie Stolyarov
Process Server
Same Day Process Service, Inc.
1413 K St., NW, 7th Floor
Washington DC 20005
(202)-398-4200
info@samedayprocess.com

Internal Job
ID:276405



District of Columbia
Signed and sworn to (or affirmed) before me
on 3-25-22 by Natalie Stolyarov
Date Name (s) of person(s) making statement


Signature of Notary Public


Title of Office
My commission expires
Brandon Snisko
Notary Public, District of Columbia
My Commission Expires 9/14/2026

Mark D. Parker
PARKER, HEITZ & COSGROVE, PLLC
401 N. 31st Street, Ste. 805
P.O. Box 7212
Billings, MT 59103-7212
Phone: (406) 245-9991
Facsimile: (406) 245-0971
Email: markdparker@parker-law.com

Attorney for National Board of Medical Examiners

No. DV-20-100

FILED this 20 day of April 2022
Barbara D. Johnson
Clerk of District Court
By _____ Deputy Clerk

**MONTANA FOURTEENTH JUDICIAL DISTRICT COURT
MUSSELSHELL COUNTY**

TESSA ZOLNIKOV,

Plaintiff,

vs.

**NATIONAL BOARD OF
MEDICAL EXAMINERS,**


Defendant.

Cause No. DV-20-100

**NOTICE OF FILING
NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that defendant National Board of Medical Examiners has filed a Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1441, and 1446 in the United States District Court for the District of Montana, Billings Division. A copy of the Notice of Removal, which was filed on April 20, 2022, is attached hereto as **Ex. A**.

DATED this 20th day of April, 2022



Mark D. Parker
PARKER, HEITZ & COSGROVE, PLLC
Attorney for National Board of Medical Examiners

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Filing Notice of Removal was served on the following recipient on this 20th day of April 2022 by placing a true and correct copy of same in the U.S. mail, postage prepaid:

Robert Farris-Olsen
Morrison Sherwood Wilson Deola, PLLP
401 N. Last Chance Gulch
Helena, MT 59601

Attorney for Petitioner Tessa Zolnikov



Mark D. Parker

Mark D. Parker
Parker, Heitz & Cosgrove, PLLC
401 N. 31st St., Suite 805
P.O. Box 7212
Billings, MT 59103-7212
Phone: (406) 245-9991
Facsimile: (406) 245-0971
Email: markdparker@parker-law.com

Attorneys for National Board of Medical Examiners

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

TESSA ZOLNIKOV,

Plaintiff,

vs.

NATIONAL BOARD OF MEDICAL
EXAMINERS,

Defendant.

CV _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, the National Board of Medical Examiners ("NBME") files this Notice of Removal to remove the action titled *Tessa Zolnikov v. National Board of Medical Examiners*, Docket No. DV-20-100, from the Montana Fourteenth Judicial District Court, Musselshell County, to the United States District Court for the District of Montana, Billings Division. This Court has original jurisdiction under 28 U.S.C. § 1331, because Plaintiff's



Complaint asserts claims under the Rehabilitation Act and the Americans with Disabilities Act, both of which are federal statutes.

In support of this Notice of Removal, NBME respectfully states as follows:

A. Background

1. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon NBME in the state court action are attached hereto at **Exhibit A**.

2. In her State Court Complaint, Plaintiff states that she is a medical student at the University of Washington School of Medicine. Ex. A, Complaint ¶ 2. She alleges that she is required to take and pass three tests administered by NBME as part of her medical school requirements. *Id.* ¶ 6. Plaintiff requested testing accommodations from NBME, including extra testing time, on two tests (“Step 1” and “Step 2”) based on an assertion that she has generalized anxiety disorder and post-traumatic stress disorder. *Id.* ¶¶ 8-9, 22. NBME denied Plaintiff’s requests. *Id.* ¶¶ 16, 25.

3. Plaintiff passed both the Step 1 and Step 2 tests without testing accommodations. *Id.* ¶¶ 19, 25. Nevertheless, Plaintiff claims to have suffered damage based on NBME’s denial of her requests, and she seeks compensatory and punitive damages in her complaint. *Id.* ¶¶ 26, 32, 36.

4. In removing this action, NBME denies that it has violated any laws.

B. Federal Question Jurisdiction

5. Plaintiff asserts two claims in her Complaint: (1) “Count I - Violation of the Rehabilitation Act” and (2) “Count II - Violation of the Americans with Disabilities Act.”

6. Plaintiff’s first claim is raised under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Her second claim is raised under the Americans with Disabilities Act, 42 U.S.C. § 12189.

7. Plaintiff’s claims arise under federal law. This Court, therefore, has original jurisdiction over Plaintiff’s action pursuant to 28 U.S.C. § 1331. Removal to this Court is proper under 28 U.S.C. § 1441(a).

C. Timeliness of Removal and Non-Waiver of Defenses

8. This action was originally filed by Plaintiff on December 3, 2020, in the Montana Fourteenth Judicial District Court, Musselshell County, and assigned docket number DV-20-100.

9. Removal of this action is timely. NBME received and was served with a copy of the Complaint and Summons on March 24, 2022. This Notice of Removal is being filed within 30 days after receipt of the Complaint by NBME and within 30 days after service of the summons on NBME. *See* 28 U.S.C. § 1446(b)(1).

10. By removing this action to this Court, NBME does not waive and expressly reserves all defenses available to it.

D. Propriety of Removal to This Court

11. The Montana Fourteenth Judicial District Court, Musselshell County, is located within the District of Montana, Billings Division. Pursuant to 28 U.S.C. § 1441(a), this action is properly removed to this Court.

E. Notice to State Court and Plaintiff

12. Pursuant to 28 U.S.C. § 1446(d) and Local Rule 3.3, NBME will promptly (and within seven days) file a copy of this Notice of Removal with the Montana Fourteenth Judicial District Court, Musselshell County. NBME will also promptly provide Plaintiff with written notice of the filing of this Notice of Removal.

CONCLUSION

For the foregoing reasons, NBME respectfully removes this action to the United States District Court for the District of Montana, Billings Division, and respectfully requests that no further proceedings be held in this action in the Montana Fourteenth Judicial District Court, Musselshell County.

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///

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DATED this 20th day of April, 2022.

/s/ Mark D. Parker

Mark D. Parker

*Attorneys for National Board of
Medical Examiners*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Removal was served on the following recipient on this 20th day of April, 2022 by placing a true and correct copy of same in the U.S. mail, postage prepaid:

Robert Farris-Olsen
Morrison Sherwood Wilson Deola, PLLP
401 N. Last Chance Gulch
Helena, MT 59601

Attorney for Petitioner Tessa Zolnikov

/s/ Mark D. Parker

EXHIBIT A

Robert Farris-Olsen
MORRISON, SHERWOOD
WILSON, DEOLA, PLLP
401 N. Last Chance Gulch
Helena, MT 59601
(406) 442-3261
(406) 443-7294 Facsimile
Rfolsen@mswdlaw.com

CLERK OF DISTRICT COURT
BARB HALVERSON
2020 DEC -3 P 1:59
FILED
Tabitha Worley
BY DEPUTY

Attorney for Tessa Zolnikov

**MONTANA FOURTEENTH JUDICIAL DISTRICT COURT
MUSSELSHELL COUNTY**

TESSA ZOLNIKOV,

Plaintiff,

vs.

NATIONAL BOARD OF MEDICAL
EXAMINERS,

Defendant.

Cause No.: DV-20-100

COMPLAINT AND JURY DEMAND

Comes now, Plaintiff, Tessa Zolnikov, and for her complaint against the National Board of Medical Examiners (NBME), states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a resident of Roundup, Montana.
2. Respondent, NBME, is the entity responsible for providing testing services for medical students, and providing accommodations for those students with disabilities.
3. Jurisdiction in this court is appropriate.
4. Venue is appropriate in this court as the Plaintiff resides in Musselshell County.

FACTUAL BACKGROUND

5. Plaintiff is, and was at the relevant time, a medical student at the University of Washington School of Medicine.
6. As part of her medical school requirements, she is required take and pass three tests administered by the National Board of Medical Examiners (NBME). The first test is the "Step 1 test."
7. In 2018, Plaintiff registered to take the Step 1 test through NBME. The test was scheduled for December 2018.
8. Concurrently with registering for the Step 1 test, Plaintiff submitted a request for accommodations in accordance with NBME's procedures. In her request, she sought two accommodations: (1) 50% additional time to take the test and (2) a reduced distraction environment.
9. She needed these accommodations as a result of her generalized anxiety disorder ("GAD") and her post-traumatic stress disorder ("PTSD").
10. Plaintiff submitted the request on September 23, 2018, and included the necessary information.
11. As part of the request, Plaintiff attached information from three counselors. The first, Peggy Albee, whom she had seen on August 29, 2018, or less than a month before the accommodation request. Ms. Albee diagnosed her with GAD and PTSD. Both disorders are triggered as test times approach and result in increased anxiety, sleep disturbance, bad dreams, increase heart rate, racing thoughts, problems with focusing, fear of failure, hypervigilance.

12. Plaintiff also submitted evidence from Megan Saab, and Marlena Renwyck. Ms. Saab diagnosed her with GAD and an unspecified problem related to social environment. Ms. Renwyck diagnosed her with an adjustment disorder, with mixed anxiety and depressed mood as well as a specific phobia, situational. Both of these professionals confirmed the symptoms that Ms. Albee identified.
13. In addition to the medical documentation, Plaintiff also submitted proof of past testing accommodations.
14. While a student at the University of Washington, Plaintiff was appropriately provided accommodations for 50% additional time on all timed exams, and a reduced distraction environment. The reduced distraction environment was meant to limit noise and visual distractions. she received these accommodations in both 2017 and 2018.
15. With these accommodations, Plaintiff was able to demonstrate her mastery of the material tested. As a result, she finished classes well above passing.
16. Despite the evidence Plaintiff submitted to NBME, she was denied an accommodation on November 19, 2018, because the evidence she submitted was allegedly insufficient. At no point had NBME requested additional documents, or identified specific information that it needed. Rather, NBME advised that Plaintiff did not need to submit additional information when she called on October 23, 2018.
17. Plaintiff appealed the denial by letter with NBME dated December 8, 2018.
18. On December 12, 2018, the appeal was denied for the same reasons as my initial application.

19. So, on December 14, 2018, Plaintiff took the Step 1 test and passed it by only 2 points, well below the average score..
20. Plaintiff was discriminated against by NBME based on her mental disability.
21. Subsequently, Plaintiff scheduled her to take her Step 2 test on October 1, 2019, and initially chose not to request an accommodation because of NBME's prior refusals to grant her an accommodation.
22. However, on or about September 16, 2019, Plaintiff requested an accommodation for 50% additional time and a reduced distraction environment. She attached supporting documents from three medical professionals.
23. Each assessment again showed that Plaintiff suffered from GAD and/or PTSD, which are disabilities.
24. In particular, Plaintiff's GAD and/or PTSD substantially limit her ability to take her medical school, and other tests, which are major life activities.
25. Despite the clear evidences that Plaintiff suffered from GAD and PTSD, and, therefore, suffered from a disability, NBME refused to provide an accommodation. As a result, her Step 2 result was lower than it should have been.
26. As a result of NBME's discrimination, Plaintiff has suffered damages. Here damages include, but are not limited to future lost wages and emotional distress.

COUNT I – VIOLATION OF THE REHABILITATION ACT

27. The preceding paragraphs are realleged as though set forth in full.
28. Plaintiff suffers from a disability. Namely, her GAD and PTSD. Thus, she is a qualified individual with a disability.

29. NBME is subject to the Rehabilitation Act, including section 504.

30. NBME discriminated against her by failing to provide her requested accommodations with respect to the Step 1 and Step 2 tests.

31. NBME was well aware of Plaintiff's disability, including her history of accommodations in both undergraduate and graduate school. Simultaneously, NBME was aware that its failure to accommodate Plaintiff's disability would cause her harm.

32. Thus, NBME is liable to Plaintiff for the compensatory and punitive damages caused by its violations of Section 504 of the Rehabilitation Act.

COUNT II – VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

33. The preceding paragraphs are realleged as though set forth in full.

34. Section 309 of the ADA requires that NBME administer its examinations in a place and manner accessible to persons with disabilities. 42 U.S.C. § 12189. This, in turn, requires that the examination must be administered so as to best ensure that the examination results accurately reflect the examinee's aptitude.

35. For the same reasons that NBME violated Section 504 of the Rehabilitation Act, it violated section 309.

36. Thus, NBME is liable to plaintiff for her actual and punitive damages stemming from its violation of Section 309 of the American's with Disabilities Act.

Wherefore, Plaintiff requests the following relief:

1. Compensatory and punitive damages.
2. Costs and attorney fees.
3. Any other relief this court deems just and proper.

Dated this 2nd day of December, 2020.

MORRISON SHERWOOD WILSON & DEOLA

A handwritten signature in black ink, appearing to read "Robert Farris-Olsen", written over a horizontal line.

Robert Farris-Olsen
Attorney for Tessa Zolnikov

Envelope: UPS_LETTER_CENTER
WINDOW
Total Pages: 10
Safety/Seal(101761)

TERRI THONGSAVAT 2148323601 CT - DALLAS SOP TEAM 1999 BRYAN STREET DALLAS TX 75201		1.0 LBS LTR	1 OF 1
SHIP TO: LINDA GADSBY 2155909525 NATIONAL BOARD OF MEDICAL EXAMINER 3750 MARKET ST PHILADELPHIA PA 19104			
	PA 191 9-60 		
UPS NEXT DAY AIR		1	
TRACKING #: 1Z X21 278 01 2905 1699			
			
BILLING: P/P			
Reference No.1: SOP/2401130/541283581/CT SOP Custo  TM			
<small>XOL 82.06.13 NMS 13.0A.08/2022</small>			

1873094

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Origin: Wolters Kluwer UPS 562130

CT Packing Slip



UPS Tracking # : 1ZX212780129051699
Created By : BATCH BATCH
Created On : 03/24/2022 02:52 PM
Recipient :

Title :	-
Customer :	National Board of Medical Examiners of the United States of America
Address :	3750 MARKET ST
Email :	lgadeby@nbme.org
Phone :	215-5909525
Fax :	-

Package Type : Envelope
Items shipped : 1

541283681	DV20100	National Board of Medical Examiners of the United States of America
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**Service of Process
Transmittal**
03/24/2022
CT Log Number 541283581

TO: Linda Gadsby
National Board of Medical Examiners of the United States of America
3750 MARKET ST
PHILADELPHIA, PA 19104-3190

RE: Process Served in District of Columbia

FOR: National Board of Medical Examiners of the United States of America (Domestic State: DC)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: TESSA ZOLNIKOV vs. National Board of Medical Examiners
DOCUMENT(S) SERVED: *
COURT/AGENCY: None Specified
Case # DV20100
ON WHOM PROCESS WAS SERVED: C T Corporation System, Washington, DC
DATE AND HOUR OF SERVICE: By Process Server on 03/24/2022 at 03:17
JURISDICTION SERVED: District of Columbia
APPEARANCE OR ANSWER DUE: None Specified
ATTORNEY(S) / SENDER(S): None Specified
ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780129051699
REGISTERED AGENT ADDRESS: C T Corporation System
1015 15th Street, NW
Suite 1000
Washington, DC 20005
866-539-8692
CorporationTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



PROCESS SERVER DELIVERY DETAILS

Date: Thu, Mar 24, 2022

Server Name: Drop Service

Entity Served	NATIONAL BOARD OF MEDICAL EXAMINERS
Case Number	DV20100
Jurisdiction	DC



DV-20-100

**MONTANA FOURTEENTH JUDICIAL DISTRICT COURT
MUSSELSHELL COUNTY**

TESSA ZOLNIKOV,

Plaintiff,

vs.

National Board of Medical Examiners

Defendant.

Cause No.: DV-20-100

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Witness by my hand and seal of said Court, this 3 day of ~~December~~, 2020.

CLERK OF COURT
Barb Halverson

BY:

Tabitha Worley
Deputy Clerk